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8 Attorneys for Defendant  
9 GALLO GLASS COMPANY

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 LARRY BOECKEN, JR.,

13 Plaintiff,

14 v.

15 GALLO GLASS COMPANY, and  
16 DOES 1 THROUGH 50,  
17 INCLUSIVE,

18 Defendant.

CASE NO. 1:05-CV-00090 OWW DLB

**STIPULATION AND ORDER GRANTING  
DEFENDANT GALLO GLASS COMPANY  
LEAVE TO FILE FIRST AMENDED ANSWER**

Judge: Hon. Oliver W. Wanger

**BACKGROUND**

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3           1.       This action was filed in 2004.

4           2.       On May 5, 2011, Nancy L. Abell of Paul, Hastings, Janofsky & Walker  
5 LLP entered an appearance of counsel on behalf of Defendant Gallo Glass Company. At the time  
6 she was retained by Gallo Glass Company, Ms. Abell discovered that Plaintiff Larry Boecken, Jr.  
7 (“Plaintiff”) had filed on August 21, 2008 a Voluntary Petition for bankruptcy under Chapter 7 of  
8 the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California,  
9 Case No. 08-15050-B-7. On or about December 30, 2008, the United States Bankruptcy Court  
10 granted Plaintiff a discharge under section 727 of title 11, United States Code. Ms. Abell  
11 apprised Plaintiff’s counsel of these facts on May 5, 2011.

12           3.       Defendant submits that (i) Plaintiff’s claims are the property of the  
13 bankruptcy estate; (ii) Plaintiff has no standing to pursue them in this Court for any purpose,  
14 including settlement; and (iii) Plaintiff is judicially estopped from litigating this lawsuit.

15           4.       Therefore, Defendant requests leave to file its DEFENDANT GALLO  
16 GLASS COMPANY’S FIRST AMENDED ANSWER TO PLAINTIFF’S COMPLAINT AND  
17 DEMAND FOR JURY TRIAL, attached hereto as Exhibit A, to assert two new affirmative  
18 defenses on the basis of this newly-discovered evidence: The Twelfth Affirmative Defense  
19 (paragraph 42, page 7, lines 14-26) (lack of standing) and the Thirteenth Affirmative Defense  
20 (paragraph 43, page 8, lines 1-15) (judicial estoppel).

21           5.       Plaintiff’s counsel advises the Court that it was unaware of Plaintiff’s  
22 bankruptcy proceeding until Ms. Abell brought it to counsel’s attention.

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**STIPULATION**

Therefore, the parties stipulate that Defendant Gallo Glass Company be granted leave to file DEFENDANT GALLO GLASS COMPANY'S FIRST AMENDED ANSWER TO PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL, attached hereto as Exhibit A.

Dated: May 20, 2011

LAW OFFICES OF MINA L. RAMIREZ

By: /s/ Noah W. Kanter

Noah W. Kanter  
Counsel for Plaintiff  
Larry Boecken, Jr.

Dated: May 20, 2011

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: /s/ Nancy L. Abell

Nancy L. Abell  
Counsel for Defendant  
Gallo Glass Company

**ORDER**

IT IS SO ORDERED.

Dated: June 1, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE